

Proc II
GAO 00046

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,312

FILE: B-193049

DLG-01676

DATE: May 30, 1979

addressee

MATTER OF: Harris Management Company, Inc. Co.

[Protest Alleging Awardee's Bid Was Unreasonably Low]

DIGEST:

1. Possibility of buy-in is not proper basis to challenge validity of award. Fact that bidder may incur loss does not justify rejecting otherwise acceptable bid.
2. Protest based on matters of agency's affirmative determination of responsibility is not reviewable by GAO absent evidence of fraud or other circumstances not applicable here. Mere allegation of fraud, however, provides no basis for considering matter.
3. GAO has no authority under Freedom of Information Act to determine what information Government agencies must disclose. Protester's recourse is to pursue disclosure remedy under Act.
4. Claim by protester for bid preparation costs is denied because protester has not shown agency's actions were arbitrary or capricious. No legal authority exists for granting protester's request for related costs.

DLG-01677 Harris Management Company, Inc. (Harris) protests the award of contract No. N00604-79-C-0008 by the Naval Supply Center, Pearl Harbor (Navy) to Tamp Corporation (Tamp) for mess attendant services. Harris contends that Tamp is not responsible because it submitted an unreasonably low bid price. In support of this position Harris states that Tamp has defaulted on a previous Government contract because it could not perform at its bid price and that Tamp will incur a minimum loss of \$86,728.20 on this contract.

arg. con.
new code
made
DLG-01675

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We have consistently held that the possibility of a "buy-in" or the submission of a below cost bid is not a proper basis upon which to challenge an award. Inter-Con Security Systems, Inc., B-189165, July 15, 1977, 77-1 CPD 434. To properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible. Such a determination was not made here.

However, Harris also challenges the Navy's determination that Tamp is responsible by noting that Tamp has defaulted on a prior contract and by alleging that the Navy's actions have been "tantamount to fraud." Harris requests that our Office conduct investigation of the Navy's determination.

The possibility that Tamp may have defaulted on a prior contract does not automatically justify a determination of nonresponsibility. Ikard Manufacturing Company, B-192316, November 1, 1978, 78-2 CPD 315. Where, as here, the contracting officer has determined a bidder to be responsible, this Office will not review that decision unless there is a showing of fraud on the part of procurement officials or unless certain other circumstances, not applicable here, exist. M&M Services, Inc., B-194531, April 26, 1979, 79-1 CPD 290. Nor do we conduct "investigations" pursuant to our bid protest function for the purpose of establishing the validity of the protester's statements. M&H Manufacturing Co., Inc., B-191950, August 18, 1978, 78-2 CPD 129. Harris has submitted no evidence of fraud by procurement officials and thus offers no basis for our considering this matter. Mars Signal Light Company, B-193942, March 7, 1979, 79-1 CPD 164.

Harris has requested that it be furnished certain documents which it considered essential in pursuing its protest. The Navy failed to provide these documents following a Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976), request by the protester. Our Office has no authority under FOIA to determine what information must be disclosed by Government agencies, and therefore there is no basis

for us to review the Navy's decision. The protester's recourse is to pursue its disclosure remedy under the procedures provided by FOIA. INTASA, B-191877, November 15, 1978, 78-2 CPD 347.

Finally, Harris requests bid preparation and related expenses. In order to recover bid preparation costs, a bidder must show that an agency has acted arbitrarily or capriciously. William D. Freeman, M.D., B-191050, February 10, 1978, 78-1 CPD 120. No such showing has been made here. Moreover, no legal authority exists for granting Harris' request for related costs.

Protest denied.

*Socolar, Milton J.
General Counsel
Stats - compt. gen.*

R. F. Kether
Deputy Comptroller General
of the United States

~~Bid Protests~~

Bidder responsibility
information disclosure
contract award protests
Bid preparation cost claims